

On October 27, 2003 appellant, a 30-year-old baggage screener, injured her back, right arm and right leg when the chair she was sitting on collapsed. She filed a claim for compensation on October 27, 2003 which the Office accepted for lumbar sprain, right ankle sprain and right knee sprain. The Office paid compensation for temporary total disability.

On March 12, 2007 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on February 26, 2007 which was causally related to her accepted right knee and low back conditions. The record indicates that she received continuation of pay benefits from February 27 through April 14, 2007.

Appellant submitted a March 7, 2007 Form CA-17 in which it was noted that she would be unable to work from February to March 31, 2007. The form was initialed at the bottom by a physician specializing in family practice.

Appellant submitted a March 28, 2007 Form CA-17 in which it was noted that she would be unable to work from February 28 to May 15, 2007. The form was initialed at the bottom by a physician specializing in family practice.

Appellant filed Forms CA-7 dated April 15 and May 27, 2007 seeking compensation for wage loss from April 15 to May 23, 2007, when she returned to light duty.

Appellant submitted a March 27, 2007 report from Dr. Mark J. Triffon, a specialist in orthopedic surgery, who related the history of injury that appellant injured her right knee and lower back as a result of a work injury in October 2003 and that she sustained another injury in September 2006 when she tripped over a bag at the airport. Dr. Triffon stated that appellant had been out of work recently due to back problems and had experienced episodes of numbness and tingling. He advised that he had reviewed a magnetic resonance imaging (MRI) scan which showed a medial meniscal tear, as well as x-rays which showed some lateral patellar impingement and some joint space narrowing medially. Dr. Triffon noted that appellant experienced leg locking and catching pain when she arose from a sitting position, in addition to pain with prolonged sitting or standing and pain when twisting or bending and squatting; he advised that these were all classic symptoms of a meniscal tear. He recommended that she undergo arthroscopic surgery to ameliorate her right meniscus condition and aid in her return to normal work activities.

In an April 24, 2007 report, Dr. Stephen Altic, Board-certified in family practice, related that appellant complained of continued, persistent low back pain. He noted that on examination she demonstrated painful flexion-extension in the lumbar spine with limitations in flexion-extension with flexion at 35 degrees and extension at 0 degrees. Dr. Altic advised that a March 30, 2007 MRI scan showed mild to moderate facet arthropathy at L3-4, L4-5 and L5-S1, consistent with appellant's pain, with no evidence of disc herniation. Noting the contrast between these results and appellant's November 1, 2004 MRI scan, which was normal and showed no evidence of facet arthropathy, he opined that her lumbar axial pain and facet arthropathy were causally related to the October 2003 work injury. Dr. Altic advised that this was the only reasonable conclusion because such a condition takes years to develop and show up radiologically and because no traumatic event had occurred between the two tests. He asserted that, if appellant's current facet arthropathy was merely due to a degenerative aging process, she would not have had a normal MRI scan in 2004 and a markedly abnormal MRI scan in 2007.

Appellant submitted an April 24, 2007 Form CA-17 from a specialist in family practice which contained a handwritten notation indicating that appellant was unable to work from February 27 through May 15, 2007. The form contains a physician's initials at the bottom of the

form which are not clear, but appear to be those of Dr. Altic, a family practitioner, who examined appellant on April 24, 2007.¹

By letter dated June 1, 2007, the Office advised appellant that it required additional medical evidence to determine whether she was eligible for compensation benefits based on a recurrence of disability. It asked appellant to submit a medical report supporting that she was totally disabled as of April 15, 2007. The Office stated that appellant had 30 days to submit the requested evidence.

By decision dated September 5, 2007, the Office denied appellant's claim for compensation based on wage loss, finding that she failed to establish that her total disability as of April 15, 2007 and continuing was causally related to her accepted employment injury.

By letter dated September 14, 2007, appellant's attorney requested an oral hearing, which was held on January 4, 2008. At the hearing, appellant indicated that after her initial period of disability following the October 2003 employment injury she returned to work in approximately April 2004 on light duty. She continued to work on light duty, except for a couple of subsequent periods of disability, until February 27, 2007.² Appellant testified that she was requesting compensation for wage loss beginning April 15, 2007 because the Office authorized compensation for continuation of pay from February 27 through April 14, 2007.

In a January 21, 2008 report, Dr. Nikresh Batra, Board-certified in anesthesiology, reviewed the history of injury, stated findings on examination and indicated that appellant was experiencing pain in her lower back and right leg. He did not render an opinion as to whether appellant's February 2007 work incident was caused or aggravated by her accepted October 2003 employment injury.

By decision dated March 20, 2008, an Office hearing representative affirmed the September 5, 2007 Office decision.³

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this

¹ These initials are similar to the ones indicated by the physician in the March 27, 2007 Form CA-17. The Board accepts that the initials in both forms were written by Dr. Altic, the only family practitioner who examined and treated appellant during this period.

² Appellant stated at the hearing that she filed three additional claims for wage loss and recurrence of disability between May 2004 and February 2007. These other claims are not included with and are not adjudicated in the instant claim.

³ The hearing representative affirmed the September 5, 2007 decision but adjudicated the claim as one for recurrence of disability, beginning April 15, 2007.

burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.⁴

ANALYSIS

In the instant case, appellant has not met her burden to provide a medical opinion showing a change in the nature and extent of her injury-related conditions. She has failed to submit a rationalized, probative report which relates her condition or disability as of April 15, 2007 to her employment injury.⁵ For this reason, she has failed establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

Appellant submitted reports from Dr. Altic, who stated in his April 24, 2007 report that a March 30, 2007 MRI scan indicated mild to moderate facet arthropathy at L3-4, L4-5 and L5-S1, consistent with her complaints of lower back pain. Dr. Altic opined that appellant's current lumbar axial pain and facet arthropathy were causally related to the October 2003 work injury because her November 1, 2004 MRI scan was normal and showed no evidence of facet arthropathy, because her March 2007 MRI scan showed facet arthropathy, and because such a condition takes years to develop and show up radiologically. He also submitted Forms CA-17 dated March 27 and April 24, 2007 which indicated appellant would be unable to work until May 15, 2007, and a March 9, 2007 Form CA-20 which indicated appellant was totally disabled from February 28 to March 31, 2007 due to her work-related conditions. However, Dr. Altic did not provide any rationalized, probative medical opinion sufficient to establish that appellant's claimed total disability as of April 15, 2007 was causally related to her accepted right knee and lower back conditions. Dr. Triffon noted in his March 27, 2007 report that appellant had been out of work recently due to back problems and had experienced episodes of numbness and tingling. He also stated that an MRI scan indicated a medial meniscal tear in her right knee and that x-rays of her right knee demonstrated some lateral patellar impingement and joint space narrowing. Dr. Triffon related that appellant experienced symptoms in her right knee such as leg locking and catching pain when she arose from a sitting position, pain with prolonged sitting or standing, and pain when twisting or bending and squatting. He advised that appellant required arthroscopic surgery for her right meniscus condition to help her return to her usual work activities. However, Dr. Triffon failed to provide a medical opinion which sufficiently described appellant's light job duties or explained the medical process through which such duties would have been competent to cause the claimed recurrence of disability. His report did not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and his alleged recurrence of disability. Dr. Batra stated in his January 21, 2008 report that appellant was experiencing pain in her lower back and right leg. He did not render an opinion as to whether appellant's February 2007 work incident was caused or aggravated by her accepted October 2003 employment injury.

⁴ *Terry Hedman*, 38 ECAB 222 (1986).

⁵ The Board notes that although appellant filed a Form CA-2a claim for recurrence of disability beginning February 27, 2007, the Office authorized continuation of pay from February 27 through April 14, 2007. The Board will therefore adjudicate the claim for recurrence of disability beginning April 15, 2008.

Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of her claim that she was totally disabled as of April 15, 2007. These reports did not establish a worsening of appellant's conditions, and therefore do not constitute probative, rationalized opinion evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.⁶ In addition, appellant did not submit any evidence to show that there was a change in the nature and extent of her work requirements. The Office therefore properly found in its March 20, 2008 decision that appellant did not meet her burden to establish a recurrence of disability as of April 15, 2007.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of April 15, 2008 causally related to her accepted right ankle, right knee and lower back conditions.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 1, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *William C. Thomas*, 45 ECAB 591 (1994).